Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

October Term, 1994

HOBART C. BISHOP, NANCY CONTARDI, MARTIN L. KELLEY, J. E. LALMAN, THOMAS LOVINGGOOD, TERRY MORRIS, DIANE MORRIS, RICHARD MURPHY, HORACE RENSHAW, WENDELL SMITH, and ALBERT M. TIACHE, individually and as class representatives of all others similarly situated,

Petitioners,

vs.

COLLIER COUNTY, FLORIDA, GUY L. CARLTON, as Tax Collector of Collier County, RICHARD S. SHANAHAN, MICHAEL J. VOLPE, PATRICIA ANNE GOODNIGHT, BURT L. SAUNDERS, and MAX A. HASSE, as Commissioners of Collier County, and MARY MORGAN, as Supervisor of Elections of Collier County,

Respondents.

APPENDIX

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TABLE OF CONTENTS

Order of Supreme Court of Florida, dated October 5, 1994 (unreported), denying petition to review decision of District Court of Appeal A-1

Decision of Florida District Court of Appeal for the Second District, dated April 15, 1994 (also reported at 635 So. 2d 145 (Fla. 2d DCA 1994)), reversing judgment of Collier County Circuit Court A-3

Summary Final Judgment of the Circuit Court of Twentieth Judicial Circuit In and For Collier County, Florida, dated January 28, 1993, and Amended Final Judgment, dated December 28, 1993 . . . . . A-7

Decision of Florida District Court of Appeal for the Second District in *Freni v. Collier County*, dated February 6, 1991 (also reported at 573 So. 2d 1054 (Fla. 2d DCA 1994)) A-13

Decision of Florida District Court of Appeal for the Second District in *Freni v. Collier County*, dated October 30, 1991 (also reported at 588 So. 2d 291 (Fla. 2d DCA 1994)) A-15

Florida Laws 1992, ch. 92-204, § 2 (amending F.S. § 125.0104) A-22

F.S. § 125.0104 (Local Option Tourist Development Act, originally enacted in 1987) A-23

Legislative history of Florida Laws 1992, ch. 92-204, § 2 . . . . . A-41

SUPREME COURT OF FLORIDA

HOBART C. BISHOP, ET AL.,

PETITIONERS,

VS.

COLLIER COUNTY, FLORIDA, ET AL.

RESPONDENTS.

Wednesday, October 5, 1994

Case No. 83,745

District Court of Appeal
2nd District No. 93-00639

This cause having hereto been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330 (d).

GRIMES, C.J., OVERTON, SHAW, KOGAN AND HARDING, JJ., CONCUR

A True Copy
TEST:

Sid J. White
Clerk, Supreme Court

BH
cc: Hon. William A. Haddad, Clerk
Hon. Dwight E. Brock, Clerk
Hon. Thomas S. Reese, Judge

Mr. Timothy R. Parry
Mr. Kenneth B. Cuyler
Ms. Sylvia B. Walbolt
Mr. Alan C. Sundberg
Mr. Gary L. Sasso
Mr. Michael R.N. McDonnell
Ms. Melissa A. Gay

COLLIER COUNTY

GUY L. CARLTON, AS TAX COLLECTOR OF COLLIER COUNTY, RICHARD S. SHANAHAN, MICHAEL J. VOLPE, PATRICIA ANN GOODNIGHT, BURT L. SAUNDERS AND MAX A. HASSEE, AS COMMISSIONERS OF COLLIER COUNTY AND MARY MORGAN, AS SUPERVISOR OF ELECTIONS OF COLLIER COUNTY,

APPELLANTS,

VS.

JOSEPH FRENI, JR., THE RITZ-CARLTON HOTEL, THE NAPLES GOLF AND BEACH CLUB, INC., VAN-DEV, INC., D/B/A VANDERBILT INN ON THE GOLF, MARRIOTT'S MARCO ISLAND RESORT, INC., LA PLAYA ASSOCIATES, INC., MARCO BAY RESORT, INC., DT HOTEL DEVELOPMENT CORPORATION, D/B/A EDGEWATER BEACH HOTEL, OLDE NAPLES LAND PARTNERS, LTD., D/B/A HOWARD JOHNSON'S LODGE, AND BOMARK, INC., D/B/A TRAILS END MOTEL AND RICHARD D. GRIFFITH, INDIVIDUALLY AND AS CLASS REPRESENTATIVE OF ALL OTHERS SIMILARLY SITUATED, HOBART C. BISHOP, NANCY CONTARDI, MARTIN L. KELLEY, J.E. LALMAN, THOMAS LOVINGGOOD, TERRY MORRIS, DIANE MORRIS, RICHARD MURPHY, HORACE RENSHAW, WENDELL SMITH AND ALBERT M. TIACHE, INDIVIDUALLY, AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED,

APPELLEES.

NO. 93-00639.

DISTRICT COURT OF APPEAL OF FLORIDA,
SECOND DISTRICT.

APRIL 15, 1994

Taxpayers sought refunds of local taxes levied under invalidated ordinance permitting local tourist development tax. The Circuit Court, Collier County, Thomas S. Reese, J., awarded taxpayers refunds, and county officials appealed. The District Court of Appeal, Ryder J., held that where legislature had power in first instance to confer on counties power to impose and collect tourist tax, tax initially imposed by county was not void, although it was subject to invalidation for failure to follow procedural requirements of Local Option Tourist Development Act, and thus legislature acted within its capacity in ratifying tax by providing means to correct procedural defect of absence of plan for tourist development.

Kenneth B. Cuyler, County Atty., Naples and Gary L. Sasso and Sylvia H. Walbot, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Tampa, for appellants.

Michael R.N. McDonnell, McDonnell Law Offices, Naples, for appellee Richard D. Griffith.

Timothy R. Parry, Harter, Secrest & Emery, Naples, for appellees Hobart C. Bishop, Nancy Contardi, Martin L. Kelley, J.E. Lalman, Thomas Lovinggood, Terry Morris, Diane Morris, Richard Murphy, Horace Renshaw, Wendell Smith and Albert M. Tiache.

RYDER, Judge.

Appellants challenge the final summary judgment awarding taxpayer refunds of local taxes levied under an invalidated ordinance. We reverse.

This is the third time this court has reviewed the proceedings in the circuit court regarding Collier's ordinance no. 90-43. See Freni v. Collier County, 573 So.2d 1054 (Fla. 2d DCA 1991) (Freni I); Freni v. Collier County, 588 So.2d 291

(Fla. 2d DCA 1991) (Freni II). The ordinance permitted a local tourist development tax authorized by the Local Option Tourist Development Act (the Act), section 125.0104, Florida Statutes (1987). The circuit court initially upheld the ordinance despite the absence of a plan for tourist development as required by section 125.0104(4), Florida Statutes (1987). This court held that the submission of a plan was a necessary condition precedent to the levy of the tax and reversed the circuit court. See Freni II.

Before Freni II issued and before the county began collecting the tax, various hotel operators filed a declaratory relief action seeking to bar the operation of the ordinance. After the issuance of Freni II, the taxpayers sued for refunds of the taxes collected prior to that decision. The circuit court consolidated the hotel operators' and taxpayers' cases.

While the consolidated case proceeded in the circuit court, the legislature passed a curative act. See § 125.0104, Fla.Stat. (1992 Supp.). The 1992 amendment ratified previously imposed taxes which were subject to invalidation for failure to follow certain requirements, including the requirement that the tourist development council submit a plan for tourist development. Subsequent to the amendment, a majority of the voters in the referendum held in Collier County approved another tourist tax. The tax was levied in accordance with the Act as amended. The circuit court, nevertheless, awarded the taxpayers refunds.

We find United States vs. Heinszen, 206 U.S. 370, 27 S.Ct. 742, 1 L.Ed. 1098 (1907), controlling. Where the authority exists in the first instance to confer the taxing power, the tax thereafter imposed is not void. See Heinszen. If the tax is not void, then the legislature may ratify the tax. See Heinszen.

The legislature had the authority in the first instance to confer on counties the power to impose and collect a tourist tax.

Given the initial valid exercise of the legislature's authority, the tax as initially imposed was not void, as was the tax in New Smyrna Inlet Dist. v. Esch, 103 Fla. 24, 137 So. 1, reh'g denied, 103 Fla. 24, 138 So. 49 (1931). Although the tourist tax was subject to invalidation for want of following the procedural requirements of the Act, the legislature acted within its capacity in ratifying the tax by providing a means to correct the procedural defect of the absence of a plan for tourist development.

Accordingly, we reserve the circuit court's order awarding refunds to the taxpayers and remand the case for further proceedings consistent with this opinion.

Reversed and remanded.

FRANK, C.J., and BLUE., J., concur.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA - CIVIL ACTION

JOSEPH FRENI, JR., ET AL.,

PLAINTIFFS,

VS.

COLLIER COUNTY, FLORIDA, ET AL.,

DEFENDANTS.

CONSOLIDATED CASE NOS.
90-2182CA-01TSR
92-0419CA-01WLB
92-0791CA-01HDH

RICHARD D. GRIFFITH, ET AL.,

PLAINTIFFS,

VS.

GUY L. CARLTON,

DEFENDANTS.

HOBART C. BISHOP, ET AL.,

PLAINTIFFS,

VS.

RICHARD S. SHANAHAN, ET AL.,

DEFENDANTS.

SUMMARY FINAL JUDGMENT

THIS CAUSE having come on for hearing before the undersigned upon the Cross-Motions for Summary Judgment filed by the parties, and the Court having reviewed the memoranda submitted by counsel in support of their respective positions and having considered the arguments of counsel at the hearing, it is hereby

ORDERED:

1. The Motion for Summary Judgment of plaintiffs HOBART C. BISHOP, et al. and of RICHARD D. GRIFFITH, et al., be and the same is hereby GRANTED, and the Cross-Motion for Summary Judgment of the defendants, COLLIER COUNTY and RICHARD SHANAHAN, et al., be and the same is hereby DENIED.

2. The Court hereby reserves jurisdiction of this cause for the purpose of administering the distribution and refund of the tax proceeds which are the subject matter of this case to the members of the class certified herein and for the purpose of awarding plaintiffs' counsel reasonable attorneys' fees plus costs in connection with this action and to enter such other orders as may be deemed proper or necessary in order to effectuate this judgment.

DONE AND ORDERED this 28 day of January, 1993, in Chambers at Fort Myers, Florida.

s/Thomas S. Reese
Thomas S. Reese, Chief Judge

Copies to:
Gregory W. Hootman, Esq.
Timothy R. Parry, Esq.
Michael R.N. McDonnell, Esq.
Cathy Reiman, Esq.
Michael Provost, Esq.
Gerald S. Livingston, Esq.
Kenneth B. Cuyler, Esq.

IN THE CIRCUIT COURT
IN AND FOR COLLIER COUNTY, FLORIDA

JOSEPH FRENI, JR., ET AL.,

PLAINTIFFS,

VS.

COLLIER COUNTY, FLORIDA, ET AL.,

DEFENDANTS.

CONSOLIDATED
CASE NOS.
90-2182CA-01TSR
92-0419CA-01WLB
92-0791CA-01HDH

RICHARD D. GRIFFITH, ET AL.,

PLAINTIFFS,

VS.

GUY L. CARLTON,

DEFENDANTS.

HOBART C. BISHOP, ET AL.,

PLAINTIFFS,

VS.

RICHARD S. SHANAHAN, ET AL.,

DEFENDANTS.

AMENDED FINAL SUMMARY JUDGMENT

THIS CAUSE having come on for hearing before the undersigned upon the Cross-Motions for Summary Judgment filed by the parties, and the Court having reviewed the memoranda submitted by counsel in support of their respective positions and having considered the arguments of counsel at the hearing, it is hereby

ORDERED:

The Motion for Summary Judgment of plaintiffs HOBART C. BISHOP, et al. and of RICHARD D. GRIFFITH, et al., be and the same is hereby GRANTED, and the Cross-Motion for Summary Judgment of the defendants, COLLIER COUNTY and RICHARD SHANAHAN, et al., be and the same is hereby DENIED.

The Court hereby enters judgment for plaintiffs on the issue of liability on the part of Collier County for the refund of the disputed taxes.

The Court hereby reserves jurisdiction of this cause for the purpose of administering the distribution and refund of the tax proceeds which are the subject matter of this case to the members of the class certified herein and for the purpose of awarding plaintiffs' counsel reasonable attorneys' fees plus costs in connection with this action and to enter such other orders as may be deemed proper or necessary in order to effectuate this judgment.

DONE AND ORDERED this 28th day of December, 1993, in Chambers at Fort Myers, Florida.

s/Thomas S. Reese
Thomas S. Reese, Chief Judge

Copies to:
Gregory W. Hootman, Esq.
Timothy R. Parry, Esq.
Michael R.N. McDonnell, Esq.
Cathy Reiman, Esq.
Michael Provost, Esq.
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Kenneth B. Cuyler, Esq.

COLLIER COUNTY

JOSEPH FRENI, JR., THE RITZ-CARLTON HOTEL, THE NAPLES GOLF AND BEACH CLUB, INC., VAN-DEV, INC., D/B/A VANDERBILT INN ON THE GULF, MARRIOTT'S MARCO ISLAND RESORT, INC., LA PLAYA ASSOCIATES, INC., MARCO BAY RESORT, INC., DT HOTEL DEVELOPMENT CORPORATION, D/B/A EDGEWATER BEACH HOTEL, OLDE NAPLES LAND PARTNERS, LTD., D/B/A HOWARD JOHNSON'S LODGE, AND BOMARK, INC., D/B/A TRAILS END MOTEL,

APPELLANTS,

VS.

COLLIER COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND MARY MORGAN, AS SUPERVISOR OF ELECTIONS OF COLLIER COUNTY, FLORIDA,

APPELLEES.

No. 90-02495.

District Court of Appeal of Florida, Second District.

Feb. 6, 1991.

Appeal from nonfinal order of the Circuit Court for Collier County; Thomas S. Reese, Judge.

J. Dudley Goodlette and Cathy S. Reiman of Cummings & Lockwood, Naples, for appellants.

Brenda C. Wilson of Collier County Atty's Office, Naples, for appellees.

SCHEB, Judge.

The appellants sought to enjoin a referendum scheduled to be held on the issue of whether the Board of County Commissioners of Collier County should levy a tourist development tax pursuant to county ordinance no. 90-43. They also sought a declaratory judgment regarding the validity of the ordinance. On July 30, 1990, the trial court denied the appellants' motion for a temporary injunction on the ground that they had not demonstrated "a clear and legal right, a likelihood of irreparable harm, a substantial likelihood of success on the merits, and considerations of the public interest." This appeal ensued pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(B).

The referendum was held as scheduled on September 4, 1990, and resulted in a favorable vote. Therefore, the issue of whether the court erred in denying the motion for temporary injunction is moot.

The appellants raise other points concerning the legality of ordinance no. 90-43. These points have not, however, been ruled upon by the trial court, and hence, are not properly before us on this appeal from the court's nonfinal order denying the temporary injunction.

Accordingly, we affirm the order denying the temporary injunction as being moot. We remand for such further proceedings as may be appropriate in this action wherein the appellants sought a declaratory judgment and other relief.

SCHOONOVER, C.J., and HALL, J., concur.

COLLIER COUNTY

JOSEPH FRENI, JR., THE RITZ-CARLTON HOTEL, THE NAPLES GOLF AND BEACH CLUB, INC., MARRIOTT'S MARCO ISLAND RESORT, INC., LA PLAYA ASSOCIATES, INC., MARCO BAY RESORT, INC., DT HOTEL DEVELOPMENT CORPORATION, D/B/A EDGEWATER BEACH HOTEL, OLDE NAPLES LAND PARTNERS, LTD., D/B/A HOWARD JOHNSON'S LODGE, AND BOMARK, INC., D/B/A TRAILS END MOTEL,

APPELLANTS,

VS.

COLLIER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND MARY MORGAN, AS SUPERVISOR OF ELECTIONS OF COLLIER COUNTY, FLORIDA,

APPELLEES.

No. 90-03689.

District Court of Appeal of Florida,
Second District.

Oct. 30, 1991.

Rehearing Denied Nov. 21, 1991.

Hoteliers who were required to collect county-imposed tourist development tax appealed final judgment of the Circuit Court, Collier County, Thomas S. Reese, J., denying their request for declaratory and permanent injunctive relief. The District Court of Appeal, Scheb, Acting C.J., held that: (1)

hoteliers had standing to challenge tax, and (2) proposed tax was invalid, as county failed to comply with statutory condition precedent relating to tourist development council's preparation and submission of plan.

Reversed.

Cathy S. Reiman and J. Dudley Goodlette of Cummings & Lockwood, Naples, for appellants.

Brenda Coker Wilson, Collier County Attorney's Office, Naples, for appellee Collier County.

No appearance for appellee Mary Morgan.

Gerald S. Livingston of Kreuter & Livingston, P.A., Orlando, for amicus curiae Florida Hotel & Motel Ass'n., Inc.

SCHEB, Acting Chief Judge.

We agree with the appellants. The tourist development tax proposed by Collier County (County) and approved by a majority of its electors is invalid because the County failed to comply with the necessary statutory prerequisites.

In June 1988 the County, through its Board of County Commissioners, enacted Ordinance 88-58 which established the Collier County Tourist Development Council (TDC). The County designed this ordinance to comply with the requirements of section 125.0104, Florida Statutes (1987), Local Option Tourist Development Act, to enable the County to enact a tourist development tax. The ordinance contained a provision from the enabling act which required that the TDC "shall prepare and submit to the Board of County Commissioners for its approval a plan for tourist development." The ordinance required that the plan encompass the specifics enumerated in section 125.0104(4)(c).

Shortly thereafter, the County adopted a resolution establishing and appointing members to the TDC as required by its ordinance and section 125.0104(4)(e). The membership included Appellant Joseph Freni, Jr., and two other hoteliers, three county residents interested in tourism, a member of the Board of County Commissioners, and two representatives of municipalities within the county. After ten months of study, a plan for tourist development was proposed within the TDC. However, after several votes on whether to submit the plan, the TDC rejected the proposal.

After the TDC formally advised the County of its rejection on June 30, 1989, the County began to consider its own plan for tourist development. In May 1990 the County enacted Ordinance 90-43 based on its plan which varied from that considered by the TDC. The ordinance enacted a tourist development tax, subject to a referendum.

In response, the appellants filed suit on July 13, 1990, alleging the county ordinance authorizing the tax was enacted without a plan being first submitted by the TDC. The appellants sought to temporarily enjoin the scheduled referendum and requested the trial court to declare the ordinance invalid. The trial judge denied the appellants' request for a temporary injunction. And, since in the interim, on September 4, 1990, the voters approved the tax as proposed by the County, this court affirmed, on February 6, 1991, the trial court's denial of the temporary injunction.[1] Thereafter the trial court entered a final judgment denying the appellants' request for declaratory and permanent injunctive relief, holding: "The submission to the

---

[1] Freni v. Collier County, 573 So.2d 1054, 1055 (Fla. 2d DCA 1991) (issue of temporary injunction moot since referendum on ordinance had already been held).

Board of County Commissioners of a tourist development plan prepared and approved by the TDC is not a condition precedent to the submission of the tourist development tax question to referendum." This appeal ensued by a number of hoteliers who were required to collect the tax.

The appellants contend the trial court erred in upholding the County-imposed tax without requiring the TDC's prior preparation and submission of its tourist development plan to the County. We agree and reverse.

At the outset we reject the County's argument that the appellants do not have standing to challenge the tax because they have shown no special injury distinct from that suffered by other taxpayers in the district. The appellants meet the special injury standing requirement by virtue of their roles as collectors of a tax from their guests. *See McBride v. Overstreet,* 89 So.2d 672 (Fla.1956).

We now turn to the merits of this controversy. By enacting section 125.0104, the legislature enabled counties to levy a tax on transient rentals and to use the revenue derived therefrom for the promotion of tourism. The legislature stipulated, however, that before a county may impose any such tax, it must comply with the provisions of the statute and gain approval by a majority of the electors voting on the issue in a regular or special election.

§ 125.0104(4)(a), Fla.Stat. (1987). Accordingly, the Board of County Commissioners in enacting Ordinance 88-58 properly included the following mandate from section 125.0104(4)(c):

> Prior to enactment of an ordinance levying and imposing a tourist development tax, the Collier County Tourist Development Council shall prepare and submit to the board of county commissioners for its approval a plan for tourist development. The plan shall set forth the

> anticipated net tourist development tax revenue to be derived by the county for twenty-four (24) months following the levy of the tax; the tax district in which the tourist development tax is proposed; and a list, in the order of priority, of the proposed uses of the tax revenue by specific project or special use as the same are authorized under section 125.0104(5), Florida Statutes. The plan shall include the approximate cost or expense allocation for each specific project or special use.

Thus, the legislature imposed a condition precedent requiring the TDC to prepare and submit a tourist development plan for approval before a county would be permitted to enact an ordinance levying the tax. In calling for a referendum on the issue of whether a tax was to be imposed, it is evident that the Board of County Commissioners had recognized this condition precedent, as seen in its proposed Ordinance 90-43 authorizing the tax:

> WHEREAS, said Collier County Tourist Development Council has presented to the Board of County Commissioners its plan regarding tourist development; and
>
> WHEREAS, the Board of County Commissioners then considered and modified the county plan for tourist development; ...

Although the trial court perceived the statutory requirement that the TDC submit a plan to the County, we agree with the appellants that it erred in concluding that the statutory language did not impose a mandatory condition precedent. The legislature may incorporate in a law a condition precedent upon which execution of the law may depend. *Taylor v. Tallahassee*, 130 Fla.418, 177 So.719 (1937); *Amara v. Town of Daytona Beach*

Shores, 181 So.2d 722 (Fla. 1st DCA 1966). The County, on the other hand, argues that requiring a plan from the TDC before it imposes a tax effectively grants the TDC power over enactment. This, it says, constitutes an unlawful delegation of authority. We disagree. In this case, the legislature merely required that before the County enacts an ordinance imposing a tourist development tax, it must consider a plan submitted by the TDC. We must assume the legislature properly expressed its intent in the plain language of the statute, as statutes are to be construed and applied in the form enacted. *Van Pelt v. Hilliard,* 75 Fla. 792, 78 So. 693 (1918).

In seeking to sustain its action and uphold the trial court's judgment, the County advances two alternative arguments. First, it classifies the TDC's rejection of a proposed tax as a plan in itself, explaining that it merely modified that rejection in formulating its own plan. We reject this proposition. This argument is based on an erroneous assumption which permitted the County to prepare its own plan under the guise of modifying the TDC's recommendation that no tax be levied. Section 125.0104(4)(c) is specific that the plan shall set forth:

> [T]he anticipated net tourist development tax revenue to be derived by the county for the 24 months following the levy of the tax; the tax district in which the tourist development tax is proposed; and a list, in the order of priority, of the proposed uses of the tax revenue by specific project or special use....

TDC's rejection did not set forth any of the elements which encompasses a plan. Therefore, the TDC's communication to the County rejecting the tax did not constitute a submission of the required "plan." Further, the record does not reveal that upon

receipt of TDC's rejection that the County took any measures to compel submission of a plan by the TDC.

Next, the County urges the requirement of section 125.0104(4)(c) for submission of a plan for a tourist development tax is merely directory. Therefore, it contends such requirement is not a condition precedent to its enactment of an ordinance. We also reject this contention. In requiring submission of a plan, the statute speaks in mandatory language using the word "shall" and not "may." Moreover, if the legislature had intended to authorize a county to proceed without the input of the TDC, there would have been no need for it to have provided for the appointment of a TDC.

In sum, we think that in enacting the Local Option Tourist Development Act, the legislature perceived the need to allow a cross-section of citizens of the county, including those affected in the accommodations industry, to assist in determining whether a tourist development tax should be considered by the county and, if so, to assist the county by recommending the specifics involved. In view of this concern and the plain statutory requirements of section 125.0104, we conclude the trial court erred in denying the appellants' request for declaratory and injunctive relief.

Reversed.

LEHAN and ALTENBERND, JJ., concur.

Florida Laws 1992, c. 92-204, § 2, provides:

"The governing body of any county that levied a tourist development tax pursuant to s. 125.0104, Florida Statutes, before December 1, 1991, regardless of the effective date of the initial ordinance, which tax is invalidated or subject to invalidation for failure to follow the requirements of s. 125.0104(4), Florida Statutes, including, but not limited to, the failure of a tourist development council to submit a requisite spending plan for tourist development to the governing body of the county for approval before the ordinance levying the tax was adopted, and that subsequently levies another such tax pursuant to s. 125.0104, Florida Statutes, which tax is approved by a majority vote of the electors of the county voting in a referendum before July 1, 1993, shall use the proceeds of the invalidated tax for the purposes that are authorized in the new levy. If the subsequent tourist development tax is disapproved by a majority of the electors of the county voting in a referendum before July 1, 1993, the proceeds of the tourist development tax which was levied prior to December 1, 1991, and was invalidated or subject to invalidation as a result of a failure to follow the requirements of s. 125.0104(4), Florida Statutes, shall be used for any purpose which was authorized in the initial ordinance. Nothing in this section shall be construed to cure any failure to comply with s. 125.0104(6), Florida Statutes." Laws 1992, c. 92-175, § 2, contains essentially the same provisions.

125.0104. Tourist development tax; procedure for levying; authorized uses; referendum; enforcement

(1) Short title.--This section shall be known and may be cited as the "Local Option Tourist Development Act."

(2) Application.--The provisions contained in chapter 212 apply to the administration of any tax levied pursuant to this section.

(3) Taxable privileges; exemptions; levy; rate.--

(a) It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of chapter 212.

(b) Subject to the provisions of this section, any county in this state may levy and impose a tourist development tax on the exercise within its boundaries of the taxable privilege described in paragraph (a), except that there shall be no additional levy under this section in any cities or towns presently imposing a municipal resort tax as authorized under chapter 67-930, Laws of Florida, and this section shall not in any way affect the powers and existence of any tourist development authority created pursuant to chapter 67-930, Laws of Florida. No county authorized to levy a convention development tax pursuant to s. 212.0305 or s. 212.057, or s. 8 of chapter 84-324, Laws of Florida, shall be allowed to levy more than the 2-percent tax

authorized by this section. A county may elect to levy and impose the tourist development tax in a subcounty special district of the county. However, if a county so elects to levy and impose the tax on a subcounty special district basis, the district shall embrace all or a significant contiguous portion of the county, and the county shall assist the Department of Revenue in identifying the rental units subject to tax in the district.

(c) The tourist development tax shall be levied, imposed, and set by the governing board of the county at a rate of 1 or 2 percent of each dollar and major fraction of each dollar of the total consideration charged for such lease or rental. When receipt of consideration is by way of property other than money, the tax shall be levied and imposed on the fair market value of such nonmonetary consideration.

(d) In addition to any 1-percent or 2-percent tax imposed under paragraph (c), the governing board of the county may levy, impose, and set an additional 1 percent of each dollar above the tax rate set under paragraph (c) by the extraordinary vote of the governing board for the purposes set forth in subsection (5) or by referendum approval by the registered electors within the county or subcounty special district. No county shall levy, impose, and set the tax authorized under this paragraph unless the county has imposed the 1-percent or 2-percent tax authorized under paragraph (c) for a minimum of 3 years prior to the effective date of the levy and imposition of the tax authorized by this paragraph. Revenues raised by the additional tax authorized under this paragraph shall not be used for debt service on or refinancing of existing facilities as specified in subparagraph (5)(a)1. unless approved by a resolution adopted by an extraordinary majority of the total membership of the governing board of the county. If the 1-percent or 2-percent tax authorized in paragraph (c) is levied within a subcounty special

taxing district, the additional tax authorized in this paragraph shall only be levied therein. The provisions of paragraphs (4)(a) through (d) shall not apply to the adoption of the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph shall be the first day of the second month following approval of the ordinance by the governing board or the first day of any subsequent month as may be specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(e) The tourist development tax shall be in addition to any other tax imposed pursuant to chapter 212 and in addition to all other taxes and fees and the consideration for the rental or lease.

(f) The tourist development tax shall be charged by the person receiving the consideration for the lease or rental, and it shall be collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental.

(g) The person receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the Department of Revenue at the time and in the manner provided for persons who collect and remit taxes under s. 212.03. The same duties and privileges imposed by chapter 212 upon dealers in tangible property, respecting the collection and remission of tax; the making of returns; the keeping of books, records, and accounts; and compliance with the rules of the Department of Revenue in the administration of that chapter shall apply to and be binding upon all persons who are subject to the provisions of this section. However, the Department of Revenue may authorize a quarterly return and payment when the tax remitted by the dealer for the preceding quarter did not exceed $25.

(h) The Department of Revenue shall keep records showing the amount of taxes collected, which records shall also include records disclosing the amount of taxes collected for and from each county in which the tax authorized by this section is applicable. These records shall be open for inspection during the regular office hours of the Department of Revenue, subject to the provisions of s. 213.053.

(i) Collections received by the Department of Revenue from the tax, less costs of administration of this section, shall be paid and returned monthly to the county which imposed the tax, for use by the county in accordance with the provisions of this section. They shall be placed in the county tourist development trust fund of the respective county, which shall be established by each county as a condition precedent to receipt of such funds.

(j) The Department of Revenue is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

(k) The Department of Revenue shall promulgate such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(l) In addition to any other tax which is imposed pursuant to this section, a county may impose up to an additional 1-percent tax on the exercise of the privilege described in paragraph (a) by majority vote of the governing board of the county in order to pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a professional sports franchise facility. The provisions of paragraphs (4)(a) through (d) shall not apply to the adoption of the additional tax authorized in this paragraph.

(m) Any county which has imposed the additional 1-percent tax pursuant to paragraph (d) for a period of 1 year may, by a majority plus one vote of the governing board of the county, impose an additional tax of 2 percent of each dollar if the state is participating with the county in an economic development project for which the additional 2-percent tax is necessary to retire the bonded indebtedness, if the state's contribution toward the cost of the project does not exceed $3 million, and if the total cost of the project does not exceed $12 million. However, the additional tax imposed under this paragraph may not be levied in any portion of the county which is leased to another county. If the tax authorized in paragraph (c) or paragraph (d) is levied within a subcounty special taxing district, the additional tax authorized in this paragraph shall only be levied therein. The provisions of paragraphs (4)(a) through (d) shall not apply to the adoption of the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph shall be the first day of the second month following approval of the ordinance by the governing board or the first day of any subsequent month as may be specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(n) 1. Any county, as defined in s. 125.11(1), which, on January 1, 1989, imposes a tourist development tax on leases and rentals, may impose an additional tax, by ordinance adopted by a majority vote of the governing body, at the rate of 2 percent on the sale of food, beverages, or alcoholic beverages in hotels and motels only, or in hotels, motels, and any establishment which is licensed under s. 565.02 except any establishment, other than a hotel or motel, licensed under s. 563.02 or s. 564.02. However, if on January 1, 1989, the

county is not administering the tourist development tax pursuant to subsection (10), the governing body of the county shall not adopt the ordinance authorized in this paragraph until January 1, 1990.

2. a. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels and motels only, the proceeds of such tax shall be allocated by the county to a county-wide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in subparagraph (5)(a)2. or 3. In the event the county is not or is no longer a party to such an interlocal agreement and contract with a county-wide convention and visitors bureau, the county shall allocate the proceeds of such tax for the purposes described in subparagraph (5)(a)2. or 3.

b. If the county imposes the tax authorized in this paragraph on sales of food, beverages, or alcoholic beverages in hotels, motels, and any establishment which is licensed under s. 565.02, the proceeds from the tax shall be allocated as follows:

(I) For the first 2 years after the tax is imposed, 35 percent shall be used by the county to revitalize economically blighted areas, 20 percent shall be used by the county as provided by law, and 45 percent shall be allocated by the county to a county-wide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in subparagraph (5)(a)2. or 3. In the event the county is not or is

no longer a party to such an interlocal agreement and contract with a convention and visitors bureau, the county shall allocate the 45 percent of the proceeds for the purposes described in subparagraph (5)(a)2. or 3.

(II) Thereafter, an amount equal to the average of the proceeds collected from such tax during each of the first 2 years after the tax is imposed shall be allocated as provided in sub-sub-subparagraph (I) and any excess above such amount shall be allocated to the county to be used as provided by law.

3. The penalties provided in subsection (8) apply to the tax on the sale of food, beverages, or alcoholic beverages authorized in this paragraph.

(o) 1. In addition to any other tax which is imposed pursuant to this section, a high tourism impact county may impose an additional 1-percent tax on the exercise of the privilege described in paragraph (a) by extraordinary vote of the governing board of the county. The tax revenues received pursuant to this paragraph shall be used for one or more of the authorized uses pursuant to subsection (5).

2. A county is considered to be a high tourism impact county after the Department of Revenue has certified to such county that the sales subject to the tax levied pursuant to this section exceeded $600 million during the previous calendar year, except that no county authorized to levy a convention development tax pursuant to s. 212.0305 shall be considered a high tourism impact county. Once a county qualifies as a high tourism impact county, it shall retain this designation for the period the tax is levied pursuant to this paragraph.

3. The provisions of paragraphs (4)(a) through (d) shall not apply to the adoption of the additional tax authorized in

this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph shall be the first day of the second month following approval of the ordinance by the governing board or the first day of any subsequent month as may be specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(4) Ordinance levy tax; procedure.--

(a) The tourist development tax shall be levied and imposed pursuant to an ordinance containing the county tourist development plan prescribed under paragraph (c), enacted by the governing board of the county. The ordinance levying and imposing the tourist development tax shall not be effective unless the electors of the county or the electors in the subcounty special district in which the tax is to be levied approve the ordinance authorizing the levy and imposition of the tax, in accordance with subsection (6). The effective date of the levy and imposition of the tax shall be the first day of the second month following approval of the ordinance by referendum, as prescribed in subsection (6), or the first day of any subsequent month as may be specified in the ordinance. A certified copy of the ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance. The governing authority of any county levying such tax shall notify the department, within 10 days after approval of the ordinance by referendum, of the time period during which the tax will be levied.

(b) At least 60 days prior to the enactment of the ordinance levying the tax, the governing board of the county shall adopt a resolution establishing and appointing the members of the county tourist development council, as prescribed in paragraph

(e), and indicating the intention of the county to consider the enactment of an ordinance levying and imposing the tourist development tax.

(c) Prior to enactment of the ordinance levying and imposing the tax, the county tourist development council shall prepare and submit to the governing board of the county for its approval a plan for tourist development. The plan shall set forth the anticipated net tourist development tax revenue to be derived by the county for the 24 months following the levy of the tax; the tax district in which the tourist development tax is proposed; and a list, in the order of priority, of the proposed uses of the tax revenue by specific project or special use as the same are authorized under subsection (5). The plan shall include the approximate cost or expense allocation for each specific project or special use.

(d) The governing board of the county shall adopt the county plan for tourist development as part of the ordinance levying the tax. After enactment of the ordinance levying and imposing the tax, the plan of tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.

(e) The governing board of each county which levies and imposes a tourist development tax under this section shall appoint an advisory council to be known as the "...(name of county)...Tourist Development Council." The council shall be established by ordinance and composed of nine members who shall be appointed by the governing board. The chairman of the governing board of the county or any other member of the governing board as designated by the chairman shall serve on the council. Two members of the council shall be elected municipal

officials, one of whom shall be from the most populous municipality in the county or subcounty special taxing district in which the tax is levied. Three members of the council shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. Three members of the council shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, but who are not owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. All members of the council shall be electors of the county. The governing board of the county shall have the option of designating the chairman of the council or allowing the council to elect a chairman. The chairman shall be appointed or elected annually and may be reelected or reappointed. The members of the council shall serve for staggered terms of 4 years. The terms of office of the original members shall be prescribed in the resolution required under paragraph (b). The council shall meet at least once each quarter and, from time to time, shall make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue and perform such other duties as may be prescribed by county ordinance or resolution. The council shall continuously review expenditures of revenues from the tourist development trust fund and shall receive, at least quarterly, expenditure reports from the county governing board or its designee. Expenditures which the council believes to be unauthorized shall be reported to the county governing board and the Department of Revenue. The governing board and the department shall review the findings of the council and take appropriate administrative or judicial action to ensure compliance with this section. The changes in the composition of the membership of the tourist development council mandated by

chapter 86-4, Laws of Florida, shall not cause the interruption of the current term of any person who is a member of a council on May 7, 1986.

(5) Authorized uses of revenue.--

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in which the tax is levied. However, these purposes may be implemented through service contracts and leases with persons who maintain and operate adequate existing facilities;

2. To promote and advertise tourism in the State of Florida and nationally and internationally;

3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county; or

4. To finance beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, clean-up, or restoration of inland lakes and rivers to which there is public access.

(b) Tax revenues received pursuant to this section by a county of less than 500,000 population imposing a tourist development tax may only be used by that county for the

following purposes in addition to those purposes allowed pursuant to s. 125.0104(5)(a): to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more museums, zoological parks, fishing piers or nature centers which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. All population figures relating to this subsection shall be based on the most recent population estimates prepared pursuant to the provisions of s. 186.901. These population estimates shall be those in effect on July 1 of each year.

(c) The revenues to be derived from the tourist development tax may be pledged to secure and liquidate revenue bonds issued by the county for the purposes set forth in subparagraphs (a)1. and (a)4. or for the purpose of refunding bonds previously issued for such purposes, or both; however, no more than 50 percent of the revenues from the tourist development tax may be pledged to secure and liquidate revenue bonds or revenue refunding bonds issued for the purposes set forth in subparagraph (a)4. Such revenue bonds and revenue refunding bonds may be authorized and issued in such principal amounts, with such interest rates and maturity dates, and subject to such other terms, conditions, and covenants as the governing board of the county shall provide. The Legislature intends that this paragraph shall be full and complete authority for accomplishing such purposes, but such authority shall be supplemental and additional to, and not in derogation of, any powers now existing or later conferred under law.

(6) Referendum.–

(a) No ordinance enacted by any county levying the tax authorized by paragraphs (3)(b) and (c) shall take effect until the ordinance levying and imposing the tax has been

approved in a referendum election by a majority of the electors voting in such election in the county or by a majority of the electors voting in the subcounty special tax district affected by the tax.

(b) The governing board of the county levying the tax shall arrange to place a question on the ballot at the next regular or special election to be held within the county, substantially as follows:

___ FOR the Tourist Development Tax

___ AGAINST the Tourist Development Tax.

(c) If a majority of the electors voting on the question approve the levy, the ordinance shall be deemed to be in effect.

(d) In any case where a referendum levying and imposing the tax has been approved pursuant to this section and 15 percent of the electors in the county or 15 percent of the electors in the subcounty special district in which the tax is levied file a petition with the board of county commissioners for a referendum to repeal the tax, the board of county commissioners shall cause an election to be held for the repeal of the tax which election shall be subject only to the outstanding bonds for which the tax has been pledged.

(7) Automatic expiration on retirement of bonds.--

Anything in this section to the contrary notwithstanding, if the plan for tourist development approved by the governing board of the county, as amended from time to time pursuant to paragraph (4)(d), includes the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium,

sports arena, coliseum, or auditorium, the county ordinance levying and imposing the tax shall automatically expire upon the retirement of all bonds issued by the county for financing the same; however, nothing herein shall preclude that county from enacting an ordinance pursuant to the provisions of this section reimposing a tourist development tax, upon or following the expiration of the previous ordinance.

(8) Prohibited acts; enforcement; penalties.--

(a) Any person who is taxable hereunder who fails or refuses to charge and collect from the person paying any rental or lease the taxes herein provided, either by himself or through his agents or employees, is, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082,

s. 775.083, or s. 775.084.[2]

(b) No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax, that he will relieve the person paying the rental of the payment of all or any part of the tax, or that the tax will not be added to the rental or lease consideration or, when added, that it or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.[2]

(c) The tax authorized to be levied by this section shall constitute a lien on the property of the lessee, customer, or tenant in the same manner as, and shall be collectible as are, liens authorized and imposed in ss. 713.67, 713.68, and 713.69.

(9) County tourism promotion agencies.--In addition to any other powers and duties provided for agencies created for the purpose of tourism promotion by a county levying the tourist development tax, such agencies are authorized and empowered to:

(a) Provide, arrange, and make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such persons, as determined by the head of the agency, in connection with the performance of promotional and other duties of the agency. However, entertainment expenses shall be authorized only when meeting with travel writers, tour brokers, or other persons connected with the tourist industry. All travel and entertainment-related expenditures in excess of $10 made pursuant to this subsection shall be substantiated by paid bills therefore. Complete and detailed justification for all travel and entertainment-related expenditures made pursuant to this subsection shall be shown on the travel expense voucher or attached thereto. Transportation and other incidental expenses, other than those provided in s. 112.061, shall only be authorized for officers and employees of the agency, other authorized persons, travel writers, tour brokers, or other persons connected with the tourist industry when traveling pursuant to paragraph (c). All other transportation and incidental expenses pursuant to this subsection shall be as provided in s. 112.061. Operational or promotional advancements, as defined in s. 288.35(4), obtained pursuant to this subsection, shall not be commingled with any other funds.

(b) Pay by advancement or reimbursement, or a combination thereof, the costs of per diem and incidental expenses of officers and employees of the agency and other authorized persons, for foreign travel at the current rates as specified in the federal publication "Standardized Regulations (Government Civilians, Foreign Areas)." The provisions of this

paragraph shall apply for any officer or employee of the agency traveling in foreign countries for the purposes of promoting tourism and travel to the county, if such travel expenses are approved and certified by the agency head from whose funds the traveler is paid. As used in this paragraph, the term "authorized person" shall have the same meaning as provided in s. 112.061(2)(e). With the exception of provisions concerning rates of payment for per diem, the provisions of s. 112.061 are applicable to the travel described in this paragraph. As used in this paragraph, "foreign travel" means all travel outside the United States. Persons traveling in foreign countries pursuant to this subsection shall not be entitled to reimbursements or advancements pursuant to s. 112.061(6)(a)2.

(c) Payment by advancement or reimbursement, or by a combination thereof, the actual reasonable and necessary costs of travel, meals, lodging, and incidental expenses of officers and employees of the agency and other authorized persons when meeting with travel writers, tour brokers, or other persons connected with the tourist industry, and while attending or traveling in connection with travel or trade shows. With the exception of provisions concerning rates of payment, the provisions of s. 112.061 are applicable to the travel described in this paragraph.

(10) Local administration of tax.--

(a) A county levying a tax under the provisions of this section may be exempt from the requirements of this section that the tax collected be remitted to the Department of Revenue before being returned to the county, and that such tax be administered according to the provisions of part I of chapter 212, if the county adopts an ordinance providing for the collection and administration of the tax on a local basis.

(b) The ordinance shall include provision for, but need not be limited to:

1. Initial collection of the tax to be made in the same manner as the tax imposed under part I of chapter 212.

2. Designation of the local official to whom the tax shall be remitted, and that official's powers and duties with respect thereto. Tax revenues may be used only in accordance with the provisions of this section.

3. Requirements respecting the keeping of appropriate books, records, and accounts by those responsible for collecting and administering the tax.

4. Provision for payment of a dealer's credit as required under part I of chapter 212.

5. A portion of the tax collected may be retained by the county for costs of administration, but such portion shall not exceed 3 percent of collections.

(c) A county adopting an ordinance providing for the collection and administration of the tax on a local basis shall also adopt an ordinance electing either to assume all responsibility for auditing the records and accounts of dealers, and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate such authority to the Department of Revenue. If the county elects to assume such responsibility, it may use any power granted in this section to the department to determine the amount of tax, penalties, and interest to be paid by each dealer and to enforce payment of such tax, penalties, and interest. If the county delegates such authority to the department, the department shall distribute any collections so received, less costs of administration, to the county. The amount deducted for costs of administration by the department shall be used only for those

costs which are solely and directly attributable to auditing, assessing, collecting, processing, and enforcing payments of delinquent taxes authorized in this section. If a county elects to delegate such authority to the department, the department shall audit only those businesses in the county that it audits pursuant to part I of chapter 212.

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE & TAXATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #:	CS/HB's 147, 1551, & 1967
RELATING TO:	Local Option Tourist Development Tax
SPONSOR(S):	Committee on Tourism, Hospitality and Economic Development, and Representatives Reddick, Foley, Bronson and Hawkins
STATUTE(S) AFFECTED:	s. 125.0104
COMPANION BILL(S):	SB 334 (S), SB 996 (S), SB 1784 (S), and SB 2178 (S)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) TOURISM, HOSPITALITY & ECONOMIC DEVELOPMENT YEA 16 NAY 1

(2) FINANCE AND TAXATION

(3) APPROPRIATIONS

(4)

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I. SUMMARY:

Committee Substitute (CS) for House Bills 147, 1551, and 1967 enables any county (not just those with populations below 500,000) levying the tourist development tax pursuant to s. 125.0104, F.S., to use tax revenues for specified purposes related to the operations of museums open to the

public, that are either publicly owned or operated or owned and operated by not-for-profit organizations and open to the public. Additionally, the bill provides for the automatic expiration of the tourist development tax upon the retirement of bonds issued to finance such museums.

The bill provides for local option tourist development tax revenue use by a county which did not comply with conditions precedent to the levy of the tax authorized by s. 125.0104, F.S. A county government which had its tax levy invalidated may initiate another levy in accordance with general law and use the proceeds of the initial tax for the purposes authorized in the new levy.

The bill creates a joint study committee on tourist-related taxes and requires the committee to review specific issues related to tourist taxes. The committee is made up of 3 members of the Senate and 3 members of the House of Representatives. The committee is required to report its findings to the Legislature by January 1, 1993.

An additional provision of the bill authorizes county tourism promotion agencies to undertake marketing and advertising research and provide certain reservation and booking services. It also provides for the confidentiality of certain information given to or held by county tourism promotion agencies.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, s. 212.03, F.S., imposes a 6 percent tax for transient rentals on persons who rent, lease, or let sleeping or housekeeping accommodations in a hotel, apartment house, roominghouse, or tourist or trailer

camp. The tax does not apply where there is a written lease in excess of 6 months or to a person who continuously resides for more than 6 months. Other exemptions exist for full-time students in postsecondary education and for military personnel.

Section 125.0104, F.S., is known as the Local Option Tourist Development Act. The taxable privilege described by legislative intent in subsection (3) relates to the renting, leasing or letting for consideration of "transient rentals". Transient rentals are described in this section as living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less. This act authorizes certain counties to levy a tourist development tax of 1 or 2% on transient rentals, in addition to the tax imposed on such rentals by Chapter 212. After 3 years of collecting the 1 or 2% tax, the governing board of the county (by extraordinary vote) may elect to impose an additional 1% tax on transient rentals.

Section 125.0104(5)(a), F.S., dictates that the revenues from these taxes may be used for four designated purposes.

- To acquire, construct, extend, enlarge, remodel, repair, improve, operate and promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the county or subcounty special taxing district levying the tax and to secure or liquidate bonds for these purposes;

- To promote and advertise tourism in the state, nationally and internationally;
- To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county; or
- To finance beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access and to secure revenue bonds for these purposes.

Paragraph (c) of subsection (3) authorizes "high tourism impact" counties to levy an additional 1 percent tax (by extraordinary vote of the county's governing board) on transient rentals. A high tourism impact county is described by this paragraph to be one which the Department of Revenue certifies had transient rentals sales tax revenues in excess of $600 million during the previous calendar year or such revenues are at least 18 percent of the county's total sales tax revenues and the county's transient rentals sales tax revenues are at least $200 million. This paragraph also provides that the county may use the revenues from this 1 percent levy for those uses authorized in s. 125.0104(5), F.S.

Currently, there are 37 counties in Florida which have elected to levy local option tourist development taxes. Most of the revenues from this tax are spent by the counties on advertising and promotion and on convention centers. Several opportunities (tied to extenuating conditions) exist within s. 125.0104, F.S.,

for counties to levy additional taxes on transient rentals for other purposes such as:

- The payment of debt service on bonds issued to finance the construction, reconstruction, or renovation of a professional sports facility.
- To retire the bonded indebtedness of an economic development project co-sponsored by the county and the state.

Paragraph (b) of subsection (5), which provides that counties with less than 500,000 in population which are imposing a tourist development tax may use the revenues of that tax to acquire, construct, generally improve, or promote zoos, museums, fishing piers or nature centers. Those entities must be owned and operated publicly or by a not-for-profit corporation and open to the public.

Sixty days before a county can vote on the tourist development tax it must adopt a resolution establishing and appointing members to a county tourist development council (TDC). Paragraph (c) of subsection (4) s. 125.0104, F.S., requires such a TDC to prepare and submit a tourist development plan to be approved by the governing board, before the tax can be enacted. Paragraph (c) further stipulates that the plan must anticipate the net tourist development tax revenue to be derived by the county for 24 months following the levy of the tax, specify the tax district in which the tourist development tax is proposed, and provide a list, in priority order, of the specific, proposed uses of the tax revenues, with dollar amounts allocated for each use.

The Second District Court of Appeal invalidated a tourist development tax imposed by Collier County and approved by referendum on September 4, 1990, because the county failed to comply with the statutory prerequisites of s. 125.0104, F.S. Freni, et al. v. Collier County, 588 So. 2d 291 (Fla. 2d DCA 1991). Although the county governing board did include in the ordinance levying the tax county tourist development plan elements required in paragraph (c) of subsection (4) of s. 125.0104, F.S., it did so without the required plan from the tourist development council.

Collier County also encountered problems with the language of the ordinance: the ordinance set the effective date of the ordinance as immediate upon filing with the Secretary of State's Office after approval by referendum. The provisions of s. 125.66, F.S., require a county to file any ordinance it has passed with the Secretary of State's Office within 10 days of the ordinance's passage. That section does authorize counties to prescribe later effective dates for the provisions of the ordinance. Collier County's governing board passed the ordinance May 29, 1990, filed the ordinance with the Secretary of State's Office June 6, 1990, and held the referendum election September 4, 1990. Consequently, the county reports that there has been some confusion regarding the actual effective date of the ordinance and the initial tax levy.

A second lawsuit has recently been filed seeking refunds on behalf of a class of taxpayers. Griffin v. Carlton, No. 92-0419(Fla. 20th Cir. comp. filed Feb. 5, 1992). The revenues of the local option tourist development tax collected in Collier County, prior to the invalidation of

the tax, amount to approximately $4.9 million. The county estimates it would cost approximately $500,000 to refund these tax revenues.

Subsection (9) of s. 125.0104, F.S., describes additional powers and duties of county tourism promotion agencies. Specifically, as they relate to the agency's tourism promotion activities, the agency is authorized in this subsection to pay for certain travel and entertainment expenses. In an effort to develop destination marketing strategies, local tourist development authorities conduct or commission advertising research. When such proprietary research data is subject to open records laws, the possibility exists for a compromise of the local government's competitive edge in tourism promotion.

B. EFFECT OF PROPOSED CHANGES:

The bill authorizes any county (not just those with a population under 500,000) levying the local option tourist development tax to utilize tax revenues for the purpose of financing museums which are open to the public and publicly owned and operated or owned and operated by not-for-profit corporations. In addition, it allows for the automatic expiration of the county ordinance levying the tourist development tax upon the retirement of all bonds issued to finance such museums.

County tourism promotion agencies are authorized by the bill to conduct marketing and advertising research projects, and to provide reservation services and convention booking services that are consistent with the authorized uses of tourism tax revenues outlined in s. 125.0104(5), F.S. By authorizing an exemption from

certain public records requirements, the bill provides for the confidentiality of certain individuals who provide data or other information provided a county tourism promotion agency in response to research projects or in the process of providing booking assistance. This enables the county tourism promotion agency to protect proprietary information from its competitors.

The bill provides that if a county government, which levied a local option tourist development tax before a certain date and had its tax levy invalidated, initiates another levy in accordance with general law, it may use the proceeds of the initial tax for those purposes authorized in the new levy, regardless of the effective date of the initial levy.

The bill creates a joint study committee on tourist-related taxes and requires that committee to review specific issues related to tourist taxes. The issues identified by the bill were recommended for review in an interim report by the Committee on Tourism, Hospitality and Economic Development. The joint study committee is required to report its findings, which may include recommended legislation, to the Legislature by January 1, 1993.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends paragraphs (a) and (b) of subsection (5), subsection (7), and subsection (9) of s. 125.0104, F.S. In paragraph (a) of subsection (5) the term "museum" is added to the list of authorized tax revenue uses along with the qualifier that the museums be publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. In

paragraph (b) of subsection (5) the term "museums" is deleted from this subsection which designates certain uses for local option tourist development tax revenues in counties with a population under 500,000. In subsection (7) the term "museum" is added (with the qualifier that the museums be publicly owned and operated or owned and operated by not-for-profit organizations) to the list of facilities for which bonds were issued and provides for the automatic expiration of the county ordinance levying the tourist development tax upon the retirement of all bonds.

Subsection (9) is amended to authorize a county tourism promotion agency to undertake marketing and advertising research and provide certain reservation and booking services. It then provides an exemption from public records requirements for certain information given to or held by county tourism promotion agencies. A provision is made for the future review and repeal of this exemption.

Section 2 authorizes the governing body of any county which levied a tourist development tax pursuant to s. 125.0104, F.S., before January 1, 1991, and had that tax invalidated for failing to adhere to statutory requisites, to use the revenues of that tax under certain conditions. The county governing body may levy the tax again in accordance with the statutes and spend the tax revenues for those uses authorized by law, under the new levy.

Section 3 creates a joint interim study committee on tourist-related taxes. The committee is to be comprised of three members from the House of Representatives appointed by the Speaker of the House, and three

members of the Senate appointed by the President of the Senate. Per diem and travel expenses are authorized for the members pursuant to s. 112.061, F.S.

This section requires the committee to review and report on tourist tax issues by January 1, 1993, at which time the joint study committee will cease to exist.

Section 4 provides that this bill will be effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The approximate cost to the Legislature of 6 members traveling to Tallahassee for 3 joint committee meetings would be $5,400.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Legislature	$5,400.00

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The provisions of this bill allow authorized counties to substitute local option tourist development tax proceeds for funds the counties currently budget for museums.

2. Recurring Effects:

Same as above.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

Those counties utilizing the exemption from public records laws for information relating to proprietary research data could maintain their competitive edge by denying access to competing entities.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

This bill is exempt from consideration of the local mandates provisions.

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

Section 2 of this bill provides curative action for a class of county government which improperly levied a tax authorized by general law. Section 125.0104, F.S., authorizes any county in the state to levy a local option tourist development tax, if it meets certain prerequisites. As of January 1, 1991, 36 counties had enacted a local option tourist development tax pursuant to this section.

According to the Supreme Court in Givins v. Hillsborough County, 35 So. 89 (Fla. 1903), "The basis of the division into classes must be one founded in reason not an arbitrary selection of individuals; but where classification is well founded, and the legislation general in terms, the mere incident that but one of the class exists should not defeat the right of the Legislature to deal with the subject, nor tie its hands until a second individual shall be added to the class." The curative action addressed by the Legislature in this act currently captures one individual in the classification identified by the act. The possibility exists for a similar challenge to be raised in any one of the 35 other counties which levied tourist development taxes pursuant to s. 125.0104, F.S., prior to the date (January 1, 1991) established by this act for class distinction.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The CS includes the provisions of House Bill 147 and revises the issues included in House Bills 1551 and 1967 in the following manner:

House Bill 1551 authorized counties imposing the local option tourist development tax to use the revenues from that tax to fund emergency services within a high tourism impact county. The CS creates a joint study committee to study local needs (including emergency services) as they relate to the use of local option tourist development tax revenues.

House Bill 1967 allowed county governing boards to adopt tourist development plans for inclusion in ordinances levying local option tourist development taxes that were not developed by county tourist development councils and did not adhere to the provisions in paragraph (c) of subsection (4) of s. 125.0104, F.S. Under the original bill, an existing tax levied by an ordinance adopted by referendum vote would have been ratified and deemed to be in effect upon the initial filing with the Department of State or the approval of the electorate, whichever would have come first. The CS requires the county relevy the tax in accordance with the current provisions of the statutes in order to use the tax revenues collected under the invalidated tax levy.

In addition, the CS authorizes county tourism promotion agencies to conduct research and provide certain reservation and booking services, and provides an exemption from public records laws for certain information given to or held by county tourism promotion agencies relating to those activities.

VII. SIGNATURES:

COMMITTEE ON TOURISM, HOSPITALITY & ECONOMIC DEVELOPMENT:

Prepared by:	Staff Director:
Susan F. Holzer	Dee Hopkins Crusoe

COMMITTEE ON FINANCE & TAXATION:

Prepared by:	Staff Director:
Deborah G. Moerlins	José Diez-Arguelles

REVISED: MARCH 4, 1992 Bill No. SB
DATE: MARCH 2, 1992 Page

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

Analyst	Staff Director	Reference	Action
1. Cape	Cape	1. IT	FAV/1 Amend.
2.	Price	2. CA	Withdrawn
3. Sapolsky	Beggs	3. FT	Favorable
4.		4.	

Subject: Bill No. and Sponsor:

Local Option Tourist Development Tax — SB 2178 by Senator Dudley

I. Summary

A. Present Situation:

During the 1977 legislative session, the "Local Option Tourist Development Act" (Chapter 77-209) was adopted in order to provide counties with an option to raise additional revenues for tourist related projects or activities. Subject to a 1% or 2% tax are most rents, leases or lets, which have been contracted for periods of six months or less, or living accommodations in hotels, motels, apartment houses, rooming houses,

mobile home parks, and the like (i.e., all rental charges subject to the transient rental tax imposed in s. 212.03, F.S.). The tax rate is determined by the governing body of the county. The taxes are generally collected and administered by the Department of Revenue. The department returns proceeds, less costs of administration, to the county which imposed the tax. Counties may collect and administer the tax themselves if they adopt an ordinance in accordance with s. 125.0104(10), F.S. Currently, 37 counties levy this tax and 18 counties self-administer the tax.

Under s. 125.0104(4), F.S., the tourist development tax must be levied and imposed pursuant to an ordinance which contains the county tourist development plan prescribed under s. 125.0104(4)(c), enacted by the governing board of the county. Section 125.0104(4)(c), F.S., provides that prior to enactment of the ordinance which imposes the tax, the county tourist development council (required under paragraph (e) to be appointed by the governing board of the county) shall prepare a plan for tourist development which is submitted to the governing board of the county for its approval. The plan shall set forth the anticipated net tourist development tax revenue to be derived by the county for the 24 months following the levy of the tax; the tax district in which the tourist development tax is proposed; and a list, in the order of priority, of the proposed uses of the tax revenue by specific project or special use. Paragraph (d) of s. 125.0104, F.S., provides that the governing board of the county shall adopt the county plan for tourist development as part of the ordinance levying the tax.

The ordinance must be approved by referendum pursuant to s. 125.0104(6), F.S.

The Second District Court of Appeal invalidated a tourist development tax imposed by Collier County and approved by referendum on September 4, 1990, because the county failed to comply with the statutory prerequisites of s. 125.0104, F.S. Freni, et al. v. Collier County, 588 So.2d 291 (Fla. 2d DCA 1991) (tourist development council did not submit a plan for tourist development to the county before the ordinance was adopted). A second lawsuit has recently been filed seeking refunds on behalf of a class of taxpayers. Griffith v. Carlton, No. 92-0419 (Fla. 20th Cir. comp. filed Feb. 5, 1992).

B. Effect of Proposed Changes:

The bill would authorize the governing body of a county under specified circumstances to use the proceeds from an invalidated tourist development tax for purposes authorized in a new levy.

Specifically, it would authorize the governing body of any county that levied a tourist development tax pursuant to section 125.0104, F.S., before January 1, 1991, which tax is invalidated for failure of a tourist development council to submit a requisite spending plan for tourist development to a governing body of the county for approval before the ordinance levying the tax was adopted, and that levies another such tax pursuant to s. 125.0104, F.S., which is approved by a majority vote of the electors of the county voting in a referendum before January 1, 1993, to use the

proceeds of the invalidated tax for the purposes that are authorized in the new levy.

The bill is intended to ratify the Collier County tourist development tax invalidated by the Second District Court of Appeal in the Freni case cited above.

II. Economic Impact And Fiscal Note:

A. Public:

None.

B. Government:

Any county meeting the requirements of the bill may use the amount of proceeds of an invalidated tourist development tax for the purposes authorized in a new levy. Collier County collected approximately $5 million in its invalidated levy.

III. Municipality/County Mandates Restrictions:

None.

IV. Comments:

It is within the prerogative of the courts to find that a bill introduced and treated by the Legislature as a general law is in reality a special law, thus invoking Article III, section 10, Florida Constitution, which requires special laws either to be pursuant to referendum approval or noticed pursuant to ch. 11, F.S. See Department of Business Regulation v. Classic Mile, Inc., 541 So.2d 1155 (Fla. 1989). The Constitution defines a special law as a special or local law. Article X, § 12(g), Florida Constitution. The Florida courts have defined a special law as a law

> relating to, or designed to operate upon, classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.

Department of Business Regulation v. Classic Mile, Inc. (quoting State ex rel. Landis v. Harris, 120 Fla. 555, 562-63, 163 So.237, 240 (1934) (citations omitted).

In this context it must also be noted that Art. III, Sec. 11(a)(2), prohibits special laws pertaining to "assessment or collection of taxes for state or county purposes...." Further, Article VII, Section 1(a), Florida Constitution, provides that all forms of taxation, other than ad valorem, "shall be preempted to the state except as provided by general law." (Emphasis added). However, the courts do give wide discretion to the Legislature in establishing statutory classification schemes. Department of Business Regulation v. Classic Mile, Inc.

Curative legislation has been upheld by Florida courts to ratify a local government's actions after-the-fact. E.g., Middleton v. City of St. Augustine, 29 So. 421 (Fla. 1900); Givens v. Hillsborough County, 35 So. 88 (Fla. 1903); Orange County v. Webster, 546 So.2d 1033 (Fla. 1989).

House Bill 1967 (1992) amends section 125.0104(4)(d), F.S., by providing that if the tourist development council fails to submit a plan for tourist development pursuant to s. 125.0104(4)(c), then the county may adopt its own.

Section 2 of the House Bill then ratifies any ordinance proposing a tourist development tax that has been approved by the electorate after the tourist development council failed to submit a plan.

V. Amendments:

#1 by International Trade, Economic Development and Tourism: Requires, instead of authorizes, the governing body of the county, pursuant to the requirements of the committee substitute, to use the proceeds of an invalidated tourist development tax for the purposes that are authorized in a new levy. (WITH TITLE AMENDMENT)